

House Bill 899

By: Representatives Powell of the 171st, England of the 116th, Burns of the 159th, Jones of the 47th, Meadows of the 5th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapters 13 and 13A of Title 10 of the Official Code of Georgia Annotated, relating to tobacco product manufacturers and master settlement agreement enhancements, respectively, so as to revise and add certain definitions; to provide for procedures, conditions, and limitations; to provide for responsibilities of cigarette importers and stamping agents; to provide for duties of the Attorney General and the revenue commissioner; to amend Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on tobacco products, so as to clarify applicability in conjunction with other provisions of law; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 13 of Title 10 of the Official Code of Georgia Annotated, relating to tobacco product manufacturers, is amended by revising Code Section 10-13-2, relating to definitions regarding tobacco product manufacturers, as follows:

"10-13-2.

As used in this chapter, the term:

(1) 'Adjusted for inflation' means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) 'Affiliate' means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms 'owns,' 'is owned,' and 'ownership' mean ownership of an equity interest, or the equivalent thereof of 10 percent or more, and the term 'person' means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) 'Allocable share' means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) 'Cigarette' means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (B) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (C) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (A) of this definition. The term 'cigarette' includes 'roll-your-own' (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of 'cigarette,' 0.09 ounces of 'roll-your-own' tobacco shall constitute one individual 'cigarette.'

(5) 'Importer' means any person in the United States to whom nonfederal excise tax-paid cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or any person who smuggles or otherwise unlawfully brings cigarettes into the United States.

(6) 'Master Settlement Agreement' means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

~~(6)~~(7) 'Qualified escrow fund' means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3. The principal balance in the qualified escrow fund must always be maintained so that both the face value and the cost basis of the account are each equal to or greater than the accumulated principal deposits.

~~(7)~~(8) 'Released claims' means Released Claims as that term is defined in the Master Settlement Agreement.

~~(8)~~(9) 'Releasing parties' means Releasing Parties as that term is defined in the Master Settlement Agreement.

~~(9)~~(10) 'Tobacco product manufacturer' means an entity that after the date of enactment of this chapter directly (and not exclusively through any affiliate):

(A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of ~~subsections~~ subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

The term 'tobacco product manufacturer' shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within subparagraphs (A) through (C) of this paragraph.

~~(10)~~(11) 'Units sold' means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, ~~as measured by excise taxes collected by the state on packs (or 'roll-your-own' tobacco containers) bearing the excise tax stamp of the state~~ on packs required to bear a tax stamp pursuant to Code Section 48-11-3 and on 'roll-your-own' tobacco on which excise tax is due either by tax stamp or pursuant to an alternate method of taxation. 'Units sold' does not include cigarettes the purchase or use of which the state is prohibited from taxing under the Constitution or statutes of the United States. The state revenue commissioner ~~shall~~ and the Attorney General may promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year."

SECTION 2.

Said chapter is further amended by revising Code Section 10-13-3, relating to deposits into escrow accounts, as follows:

"10-13-3.

Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the date of enactment of this chapter shall do one of the following:

(1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(A) Place into a qualified escrow fund ~~by April 15 of the year following the year in question~~ on a quarterly basis, no later than 30 days after the end of each calendar quarter in which sales are made, the following amounts (as such amounts are adjusted for inflation):

(i) 1999: \$0.0094241 per unit sold after the date of enactment of this chapter;

(ii) 2000: \$0.0104712 per unit sold;

(iii) For each of 2001 and 2002: \$0.0136125 per unit sold;

(iv) For each of 2003 through 2006: \$0.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: \$0.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subparagraph (A) of this paragraph shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this division: (I) in the order in which they were placed into escrow; and (II) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) To the extent not released from escrow under division (i) or (ii) of this subparagraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(C) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall ~~annually~~ quarterly and annually certify to the Attorney General that it is in compliance with this paragraph. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this paragraph. Any tobacco product

manufacturer that fails in any calendar quarter or year to place into escrow the funds required under this paragraph shall:

(i) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this paragraph. The court, upon a finding of a violation of this paragraph, may impose a civil penalty (to be paid to the general fund of the state) in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this Code section. The court, upon a finding of a knowing violation of this paragraph, may impose a civil penalty (to be paid to the general fund of the state) in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed two years.

(D) An importer shall be jointly and severally liable for escrow deposits due from a nonparticipating manufacturer with respect to any nonparticipating manufacturer cigarettes that it imported and which were then sold in this state.

Each failure to make ~~an~~ a quarterly or annual deposit required under this Code section shall constitute a separate violation."

SECTION 3.

Chapter 13A of Title 10 of the Official Code of Georgia Annotated, relating to master settlement agreement enhancements, is repealed and reenacted to read as follows:

"CHAPTER 13A

10-13A-1.

The General Assembly finds that violations of Chapter 13 of this title threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The General Assembly finds that enacting procedural enhancements will aid the enforcement of such chapter and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.

10-13A-2.

As used in this chapter, the term:

(1) 'Brand family' means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, 'menthol,' 'lights,' 'kings,' and '100s,' and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(2) 'Cigarette' means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (B) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (C) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (A) of this definition. The term 'cigarette' includes 'roll-your-own' (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of 'cigarette,' 0.09 ounces of 'roll-your-own' tobacco shall constitute one individual 'cigarette.'

(3) 'Commissioner' means the state revenue commissioner.

(4) 'Dealer' means cigarette and loose and smokeless dealers as defined in paragraphs (7) and (17) of Code Section 48-11-1.

(5) 'Directory' means the directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Code Section 10-13A-3 and all brand families that are listed in such certifications developed by the Attorney General pursuant to Code Section 10-13A-4, or in the case of reference to another state's directory, the directory compiled under the similar law of the other state.

~~(5)~~(6) 'Distributor' means any person who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on dealers; and

(B) Is engaged in the business of:

(i) Manufacturing ~~cigars or~~ cigarettes in this state, importing ~~cigars or~~ cigarettes into this state, or purchasing ~~cigars or~~ cigarettes from other manufacturers or distributors; and

(ii) Selling the ~~cigars or~~ cigarettes to dealers in this state for resale but is not in the business of selling the ~~cigars or~~ cigarettes directly to the ultimate consumer of the ~~cigars or~~ cigarettes.

(7) 'Importer' means any person in the United States to whom nonfederal excise tax-paid cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or any person who smuggles or otherwise unlawfully brings cigarettes into the United States.

~~(6)~~(8) 'Master Settlement Agreement' means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

~~(7)~~(9) 'Nonparticipating manufacturer' means any tobacco product manufacturer that is not a participating manufacturer.

(10) 'Package' means any pack or other container on which a state stamp could be applied consistent with and as required by Code Section 48-11-3 that contains one or more individual cigarettes for sale. Nothing in this paragraph shall alter any other applicable requirements with respect to the minimum number of cigarettes that may be contained in a pack or other container of cigarettes. References to package do not include a container of multiple packages.

~~(8)~~(11) 'Participating manufacturer' has the meaning given that term in subsection II(jj) of the Master Settlement Agreement and all amendments thereto.

(12) 'Person' means any natural person, trustee, company, partnership, corporation, or other legal entity.

(13) 'Purchase' means any acquisition in any manner or by any means for any consideration. The term includes transporting or receiving product in connection with a purchase.

(14) 'Qualified escrow fund' means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3. The principal balance in the qualified escrow fund must always be maintained so that both the face value and the cost basis of the account are each equal to or greater than the accumulated principal deposits.

(15) 'Sale or sell' means any transfer, exchange, or barter in any manner or by any means for any consideration. Sale or sell includes distributing or shipping product in connection with a sale. References to sale 'in' or 'into' a state refers to the state of the destination point of the product in the sale, without regard to where title was transferred. References to sale 'from' the state refers to the sale of cigarettes that are located in the state to the destination in question without regard to where title was transferred.

(16) 'Shortfall amount' means the difference between:

(A) The full amount of the deposit required to be made by a nonparticipating manufacturer for a calendar quarter or year under Code Section 10-13-3; and

(B) The sum of:

(i) The actual amount deposited into escrow by the nonparticipating manufacturer for that calendar quarter or year under Code Section 10-13-3;

(ii) Any amounts deposited into escrow for that calendar quarter under subparagraph (D) of paragraph (2) of Code Section 10-13-3 by an importer on such nonparticipating manufacturer's cigarettes; and

(iii) Any amounts collected by the state for that calendar quarter under the bond posted by the nonparticipating manufacturer under Code Section 10-13A-7.

(17) 'Stamping agent' means any person that is authorized to affix stamps to packages or other containers of cigarettes under Code Section 48-11-2 or any person that is required to pay the excise tax under the alternate method of taxation, if so prescribed pursuant to Code Section 48-11-3 on 'roll-your-own' tobacco.

~~(9) 'Qualified escrow fund' means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3.~~

~~(10)~~(18) 'Tobacco product manufacturer' means an entity that after April 28, 1999:

(A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement,

and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

The term tobacco product manufacturer shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within subparagraphs (A) through (C) of this paragraph.

~~(11)(19)~~ 'Units sold' means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, ~~as measured by excise taxes collected by the state on packs (or 'roll-your-own' tobacco containers) bearing the excise tax stamp of the state.~~ on cigarette packs required to bear a tax stamp pursuant to Code Section 48-11-3 and on 'roll-your-own' tobacco on which excise tax is due either by tax stamp or pursuant to an alternate method of taxation. 'Units sold' does not include cigarettes the purchase or use of which the state is prohibited from taxing under the Constitution or statutes of the United States. The state revenue commissioner ~~shall~~ and the Attorney General may promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on cigarettes of such tobacco product manufacturer for each year.

10-13A-3.

(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the Attorney General a certification to the commissioner and Attorney General, no later than the thirtieth day of April each year, certifying that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer or is in full compliance with Chapter 13 of this title including all annual deposits required by paragraph (2) of Code Section 10-13-3.

(b) Every tobacco product manufacturer shall also certify that:

(1) Such manufacturer or its importer holds a valid permit under 26 U.S.C. Section 5713; and

(2) Such manufacturer is in compliance with all reporting and registration requirements of 15 U.S.C. Sections 376 and 376a.

(c) ~~A~~ In addition, participating manufacturer shall include in its certification a list of its brand families. A participating manufacturer shall update such list 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General and commissioner. A participating manufacturer may not include a brand family in its certification unless the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement.

~~(c)~~(d) A nonparticipating manufacturer shall include in its certification a list of all of its brand families and the number of units sold for each brand family that were sold in this state during the preceding calendar year and a list of all of its brand families that have been sold in this state at any time during the current calendar year. Such lists must indicate ~~by an asterisk~~ any brand family sold in this state during the preceding calendar year that is no longer being sold in this state as of the date of such certification, and identification by name and address of any other manufacturer of such brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update such list 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General and commissioner. A nonparticipating manufacturer may not include a brand family in its certification unless such nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Chapter 13 of this title. Such certification must also certify:

(1) That such nonparticipating manufacturer is registered to do business in this state and has appointed a resident agent for service of process and provided notice thereof as required by Code Section 10-13A-6;

(2) That such nonparticipating manufacturer has established and continues to maintain a qualified escrow fund as required by Code Section 10-13-3 and has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund;

(3) That such nonparticipating manufacturer is in full compliance with Chapter 13 of this title, ~~and with this chapter, Chapter 11 of Title 48,~~ and any regulations promulgated pursuant to ~~either chapter~~ such chapters; ~~and~~

(4) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to Chapter 13 of this title and all regulations promulgated pursuant to such chapter; the account number of such qualified escrow fund and any subaccount number for this state; the amount such nonparticipating manufacturer placed in such fund for cigarettes sold in this state during the preceding calendar year, the date and amount of

each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to Chapter 13 of this title and all regulations promulgated pursuant to such chapter;

(5) That such nonparticipating manufacturer consents to be sued in the courts of the State of Georgia for purposes of the state:

(A) Enforcing this chapter, Chapter 13 of this title, Title 48, and any regulations promulgated pursuant to these provisions; or

(B) Bringing a released claim as defined in paragraph (7) of Code Section 10-13-2;

(6) That such nonparticipating manufacturer has posted the appropriate bond required under Code Section 10-13A-7 and the information needed to establish the existence of such bond; and

(7) In the case of a nonparticipating manufacturer located outside of the United States, the nonparticipating manufacturer shall provide a declaration from each of its importers into the United States of any of its brand families to be sold in this state. The declaration shall be on a form prescribed by the Attorney General and shall state the following:

(A) The importer accepts joint and several liability with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund and for payment of all civil penalties and all reasonable costs and expenses of investigation and prosecution, including attorney's fees;

(B) The importer consents to personal jurisdiction in Georgia for the purposes of claims by the state for any obligation to place funds into a qualified escrow fund and for payment of all civil penalties and all reasonable costs and expenses of investigation and prosecution, including attorney's fees; and

(C) The importer has appointed a registered agent for service of process in Georgia according to the same requirements as established in Code Section 10-13A-6 for any nonresident or foreign nonparticipating manufacturer.

Certification in accordance with this subsection shall be deemed to be in compliance with subparagraph (C) of paragraph (2) of Code Section 10-13-3.

~~(d)~~(e) Nothing in this Code section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of Chapter 13 of this title.

(f) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

10-13A-4.

(a) ~~Not later than August 1, 2004, the~~ The Attorney General shall develop and make available for public inspection on its website a directory, as defined in paragraph (4) of Code Section 10-13A-2.

(b) The Attorney General shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the Attorney General determines is not in compliance with ~~subsection (c) of~~ Code Section 10-13A-3, unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General.

(c) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes, in the case of a nonparticipating manufacturer, that:

(1) Any escrow payment required pursuant to Chapter 13 of this title for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

(2) Any outstanding final judgment, including interest thereon, for a violation of Chapter 13 of this title has not been fully satisfied for such brand family or such manufacturer.

(d) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove tobacco product manufacturers or brand families to keep the directory in conformity with the requirements of this chapter.

(e) Every distributor shall provide and update as necessary an e-mail address to the Attorney General for the purpose of receiving any notifications as may be required by this chapter.

10-13A-5.

It shall be unlawful for any person to affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or to sell, offer for sale, or possess with intent to sell, or import for personal use, in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

417 10-13A-6.

418 (a) Any nonresident or foreign nonparticipating manufacturer or importer that has not
419 registered to do business in this state as a foreign corporation or business entity shall, as
420 a condition precedent to having its brand families included or retained in the directory,
421 appoint and continually engage without interruption the services of an agent in this state
422 as required by Code Section 48-11-5 to act as agent for the service of process on whom all
423 process and any action or proceeding against it concerning or arising out of the
424 enforcement of Chapter 13 of this title or this chapter may be served in any manner
425 authorized by law. Such service shall constitute legal and valid service of process on the
426 nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name,
427 address, phone number, and proof of the appointment and availability of such agent to the
428 satisfaction of the commissioner and Attorney General.

429 (b) The nonparticipating manufacturer or importer shall provide notice to the
430 commissioner and Attorney General 30 calendar days prior to termination of the authority
431 of an agent and shall further provide proof to the satisfaction of the Attorney General of the
432 appointment of a new agent no less than five calendar days prior to the termination of an
433 existing agent appointment. In the event an agent terminates an agency appointment, the
434 agent and the nonparticipating manufacturer or importer shall notify the commissioner and
435 Attorney General of said termination within five calendar days and shall include proof to
436 the satisfaction of the Attorney General of the appointment of a new agent.

437 (c) Any nonparticipating manufacturer or importer whose cigarettes are sold in this state
438 who has not appointed and engaged an agent as required in this Code section shall be
439 deemed to have appointed the Secretary of State as such agent and may be proceeded
440 against in courts of this state by service of process upon the Secretary of State; provided,
441 however, that the appointment of the Secretary of State as such agent shall not satisfy the
442 condition precedent for having the brand families of the nonparticipating manufacturer or
443 importer included or retained in the directory.

444 (d) The Attorney General shall update the directory as necessary in order to correct
445 mistakes and to add or remove a tobacco product manufacturer or brand family to keep the
446 directory in conformity with the requirements of this chapter. The Attorney General shall
447 post in the directory and transmit by e-mail or other practicable means to each notice of any
448 removal from the directory of a tobacco product manufacturer or brand family at least 30
449 days prior to removal from the directory of such tobacco product manufacturer or brand
450 family. Unless otherwise provided by agreement between the wholesaler and a tobacco
451 product manufacturer, the wholesaler shall be entitled to a refund from a tobacco product
452 manufacturer for any money paid by the wholesaler to the tobacco product manufacturer
453 for any cigarettes of the tobacco product manufacturer in the possession of the wholesaler

on the effective date of removal from the directory, or as subsequently received from a retail dealer as provided in this chapter, of products of that tobacco product manufacturer or brand family of cigarettes. Unless otherwise provided by agreement between a retail dealer and the wholesaler or a tobacco product manufacturer, a retail dealer shall be entitled to a refund from the wholesaler or a tobacco product manufacturer for any money paid by the retail dealer to the wholesaler or such tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still in the possession of the retail dealer on the effective date of removal from the directory of that tobacco product manufacturer or brand family.

(e) The failure of the Attorney General to provide notice of any intended removal from the directory as required under subsection (d) of this Code section or the failure of a distributor or stamping agent to receive such notice does not relieve the distributor or stamping agent of its obligations under this chapter.

10-13A-7.

(a) All nonparticipating manufacturers shall post a bond for the benefit of the state which is subject to execution under subsection (c) of this Code section. The bond shall be posted by a corporate surety located within the United States. The bond shall be posted and evidence of such posting shall be provided to the Attorney General with the nonparticipating manufacturer's quarterly and annual certifications as a condition of the nonparticipating manufacturer and its brand families being included or remaining in the directory for the following quarter or year.

(b) The amount of the bond shall be the greater of:

(1) Fifty thousand dollars; or

(2) The highest amount of escrow owed in Georgia by the nonparticipating manufacturer or its predecessor in the last 12 quarters.

(c) If a nonparticipating manufacturer that posted a bond has failed to make, or have made on its behalf by an entity with joint and several liability, escrow deposits equal to the full amount owed for a quarter within 15 days following the due date for the quarter under Code Section 10-13-3, the state may execute upon the bond, first to recover delinquent escrow, which amount shall be deposited into a qualified escrow account under Code Section 10-13-3, and then to recover civil penalties and costs authorized under such Code section. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and from the importers and stamping agents that sold its cigarettes during that calendar quarter and at any time prior to the removal of the nonparticipating manufacturer and brand from the directory.

~~10-13A-7. 10-13A-8.~~

(a) Not later than ~~20~~ 10 calendar days after the end of each calendar ~~quarter~~ month, and more frequently if so directed by the Attorney General, each distributor shall submit such information as the Attorney General requires to facilitate compliance with this chapter, including, but not limited to, a list by brand family of the total number of cigarettes, or, in the case of 'roll-your-own,' the equivalent count, for which the distributor affixed tax stamps during the previous calendar ~~quarter~~ month or otherwise paid the tax due for such cigarettes. The distributor shall also certify that the information provided to the Attorney General is complete and accurate. The distributor shall maintain and make available to the Attorney General all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of five years.

~~(b) The commissioner is authorized to disclose to the Attorney General any information received under this chapter and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this chapter. The commissioner and Attorney General shall share with each other the information received under this chapter and may share such information with other federal, state, or local agencies only for purposes of enforcement of this chapter or the corresponding laws of other states. Notwithstanding any law to the contrary, the commissioner and the Attorney General are authorized to disclose to each other any information received under this chapter, Chapter 13 of this title, and Title 48 for the purposes of determining compliance with and enforcing the provisions of this chapter, Chapter 13 of this title, and Title 48. The commissioner and Attorney General may also share such information with other federal, state, or local courts or agencies for purposes of enforcing the provisions of this chapter, Chapter 13 of this title, or the corresponding laws of other states. The commissioner and Attorney General may also disclose information provided under this Code section, Chapter 13 of this title, and Title 48 that may otherwise be confidential:~~

~~(1) In discharge of the duty to enforce or defend the provisions of this part or Chapter 13 of this title;~~

~~(2) In the course of any litigation, arbitration, or proceeding related to this part, Chapter 13 of this title, the Master Settlement Agreement, or the NPM Adjustment Settlement Agreement; or~~

~~(3) In complying with provisions in the NPM Adjustment Settlement Agreement.~~
Despite this disclosure, the information shall maintain its confidential status.

~~(c) Any tobacco sales data provided by another state, a tobacco product manufacturer, or other person or entity to a data clearing-house pursuant to the NPM Adjustment Settlement Agreement that is also provided to the Attorney General or commissioner pursuant to that~~

agreement shall be treated as confidential tax information as defined in Title 48. This subsection only applies to information received by the Attorney General or commissioner solely as a result of the NPM Adjustment Settlement Agreement.

~~(e)~~(d) The Attorney General may require at any time from the nonparticipating manufacturer proof from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with Chapter 13 of this title of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund, and the amount and date of each withdrawal from such fund.

~~(d)~~(e) In addition to the information required to be submitted pursuant to this chapter, the Attorney General may require a distributor, stamping agent, or tobacco product manufacturer to submit any additional information or documentation, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this chapter.

~~(e)~~(f) To promote compliance with this chapter, the Attorney General may promulgate regulations ~~requiring a tobacco product manufacturer subject to the requirements of subsection (c) of Code Section 10-13A-3 to make the annual escrow deposits required during the year in which the sales covered by such deposits are made.~~ The Attorney General may also require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the ~~installment~~ quarterly or annual escrow deposit.

(g) A stamping agent shall be jointly and severally liable for the escrow deposits required under Code Section 10-13-3 in the event that there is a shortfall amount. The liability of a stamping agent for escrow deposits shall be calculated as follows: If there is a shortfall amount for a nonparticipating manufacturer for a calendar quarter, each stamping agent that sold cigarettes of that nonparticipating manufacturer during the calendar quarter shall deposit into such escrow account as shall be designated by the state an amount equal to the applicable shortfall amount multiplied by a fraction, the numerator of which is the number of cigarettes of that nonparticipating manufacturer sold in or into the state by the stamping agent during that calendar quarter and the denominator of which is the total number of cigarettes of that nonparticipating manufacturer sold by all stamping agents in or into the state during that calendar quarter. To the extent a stamping agent makes payments with respect to a shortfall amount under this subsection, such stamping agent shall have a claim against the nonparticipating manufacturer for such amount.

560 ~~10-13A-8:~~ 10-13A-9.

561 (a) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a
 562 determination that a distributor or stamping agent has violated Code Section 10-13A-5 or
 563 any regulation adopted pursuant to this chapter, the commissioner may revoke or suspend
 564 the dealer or distributor's license of the ~~distributor~~ party in the manner provided by Code
 565 Section 48-11-6. Each tax stamp affixed and each sale or offer to sell cigarettes in
 566 violation of Code Section 10-13A-5 or the rules and regulations adopted pursuant to this
 567 chapter shall constitute a separate violation. For each violation, the commissioner may also
 568 impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail
 569 value of the cigarettes or \$5,000.00 upon a determination of a violation of Code Section
 570 10-13A-5 or any regulations adopted pursuant thereto. Such penalty shall be imposed in
 571 the manner provided in subsection (c) of Code Section 48-11-24.

572 (b) A dealer or distributor's license may also be subject to termination, suspension, or other
 573 available remedy found in Code Section 48-11-14, if the distributor or stamping agent:

574 (1) Fails to provide a report required under Code Section 10-13A-7;

575 (2) Files an incomplete or inaccurate report required under Code Section 10-13A-7; or

576 (3) Fails to deposit escrow as provided in subsection (g) of Code Section 10-13A-7.

577 (c) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state
 578 in violation of Code Section 10-13A-5 or other provisions of this title or Title 13 shall be
 579 deemed contraband under Code Section 48-11-9 and such cigarettes shall be subject to
 580 seizure and forfeiture as provided in ~~such Code section~~ Chapter 16 of Title 9.

581 ~~(e)~~(d) The Attorney General, on behalf of the commissioner, may seek an injunction to
 582 restrain a threatened or actual violation of Code Section 10-13A-5 or of subsection (a) or
 583 (d) of Code Section 10-13A-7 by a distributor or stamping agent and to compel the
 584 distributor to comply with said Code section or either such subsection. In any action
 585 brought pursuant to this Code section, the state shall be entitled to recover the costs of
 586 investigation, costs of the action, and reasonable attorney fees.

587 ~~(d)~~(e) It shall be unlawful for a person to sell or distribute cigarettes or to acquire, hold,
 588 own, possess, transport, import, or cause to be imported cigarettes that the person knows
 589 or should know are intended for distribution or sale in this state in violation of Code
 590 Section 10-13A-5. Any person who violates this subsection shall be guilty of a
 591 misdemeanor.

592 ~~(e)~~(f) A violation of Code Section 10-13A-5 shall constitute an unfair and deceptive act
 593 or practice under Part 2 of Article 15 of Chapter 1 of this title, the 'Fair Business Practices
 594 Act of 1975.'

595 (g) It is unlawful for any person to knowingly submit any false information required
 596 pursuant to Chapter 13 of this title or this chapter. A violation of this subsection is a

597 felony. Knowing submission of false information shall also be grounds for removal of a
598 tobacco product manufacturer or brand from the directory.

599 ~~10-13A-9.~~ 10-13A-10.

600 (a) A determination of the Attorney General to not include or to remove from the directory
601 a brand family or tobacco product manufacturer shall be subject to review in the manner
602 prescribed by Article 1 of Chapter 13 of Title 50, known as the 'Georgia Administrative
603 Procedure Act.'

604 (b) No person shall be issued a license or granted a renewal of a license under Chapter 11
605 of Title 48 to act as a distributor unless such person has certified in writing that such person
606 will comply fully with this chapter.

607 ~~(c) The first report of distributors required by subsection (a) of Code Section 10-13A-7~~
608 ~~shall be due 30 calendar days after July 1, 2003, the certifications by a tobacco product~~
609 ~~manufacturer described in subsection (a) of Code Section 10-13A-3 shall be due 45~~
610 ~~calendar days after such date, and the directory described in Code Section 10-13A-4 shall~~
611 ~~be published or made available within 90 calendar days after such date.~~

612 ~~(d)~~(c) The Attorney General may promulgate rules and regulations necessary to effect the
613 purposes of this chapter.

614 ~~(e)~~(d) In any action brought by the state to enforce this chapter, the state shall be entitled
615 to recover the costs of investigation, expert witness fees, costs of the action, and reasonable
616 attorney fees.

617 ~~(f)~~(e) If a court of competent jurisdiction finds that the provisions of this chapter and of
618 Chapter 13 of this title conflict and cannot be harmonized, then such provisions of Chapter
619 13 of this title shall control. If any section, subsection, subdivision, paragraph, sentence,
620 clause, or phrase of this chapter causes Chapter 13 of this title to no longer constitute a
621 qualifying or model statute, as those terms are defined in the Master Settlement Agreement,
622 then that portion of this chapter shall not be valid. If any section, subsection, subdivision,
623 paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid,
624 unlawful, or unconstitutional, such decision shall not affect the validity of the remaining
625 portions of this chapter or any part thereof."

626 **SECTION 4.**

627 Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on
628 tobacco products, is amended by revising paragraph (4) of subsection (c) of Code Section
629 48-11-4, relating to licensing and registration of persons engaged in the tobacco business and
630 annual fees, as follows:

"(4) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters. A separate license shall be required for each place of business. No person shall hold a distributor's license and a dealer's license at the same time."

SECTION 5.

Said chapter is further amended by revising Code Section 48-11-6, relating to suspension and revocation of licenses, as follows:

"48-11-6.

The commissioner may suspend or refuse to renew a license issued to any person under this chapter for violation of any provision of this chapter ~~or of any rule or regulation of the commissioner made pursuant to this chapter~~ or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters. After notice and opportunity for hearing, the commissioner may revoke a license issued to any person under this chapter for violation of any provision of this chapter or of any rule or regulation of the commissioner made pursuant to this chapter ~~or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters~~. Any person aggrieved by the suspension of or refusal to renew his license may apply to the commissioner for a hearing as provided in subsection (a) of Code Section 48-11-18; and any person aggrieved by the action of the commissioner in revoking or refusing to renew his license after hearing may further appeal to the courts as provided in subsection (b) of Code Section 48-11-18. No legal proceedings or other action by the commissioner shall be barred or abated by the suspension, revocation, or expiration of any license issued under this chapter."

SECTION 6.

Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section 48-11-9, relating to seizure of unstamped tobacco products as contraband, as follows:

"(a)(1) Any cigars, cigarettes, or loose or smokeless tobacco found at any place in this state without stamps affixed to them as required by this chapter and any cigarettes ~~seized pursuant to~~ in violation of subsection ~~(b)~~ (e) of Code Section ~~10-13A-8~~ 10-13A-9 are declared to be contraband articles and may be seized by the commissioner, the commissioner's agents or employees, or any peace officer of this state when directed by the commissioner to do so."

664

SECTION 7.

665

All laws and parts of laws in conflict with this Act are repealed.